

MEMORANDUM

TO: Indiana School Superintendents, Principals, and School Leaders
FROM: Andrew Bernlohr, General Counsel
RE: Administration of Statewide Assessments
DATE: November 20, 2020

This guidance document is written in recognition of the uniquely difficult situation the COVID-19 pandemic has created for Indiana school corporations during the 2020-2021 SY. Specifically, the Indiana Department of Education (IDOE) recognizes the necessity to shift to virtual and/or hybrid instructional models has made it difficult for schools to comply with the assessment requirements under state and federal law. In the way of clarification, all assessments that are characterized as “required” by IDOE are specifically required under state or federal law. IDOE does not have the authority to waive these assessment requirements. At this time, no waivers or flexibilities have been extended. We have communicated with the US Department of Education, the Governor’s Office and the Indiana State Board Of Education to determine what flexibilities may be available for Indiana schools.

Statewide ILEARN, WIDA, and NAEP assessments are required under federal law and regulation. On September 3, 2020, the US Department of Education issued a [letter](#) to all Chief State School Officers regarding the expectations and requirements for statewide assessment administration during the 2020-2021 school year. Specifically, the letter stated that, “...it is now our expectation that states will, in the interest of students, administer summative assessments during the 2020-2021 school year, consistent with the requirements of the law and following the guidance of local health officials.” Further, the letter indicated that no waivers from the federal requirement to assess students will be granted for the 2020-2021 school year.

Pursuant to federal statute at sec. 1111(b)(2)(B)(II) of Title I of ESSA, annual statewide assessments in mathematics, language arts and science shall be administered to all public elementary school and secondary school students in the State. In Indiana, this annual assessment is ILEARN or, for a limited number of students, ISTEP+.

Additionally, participation in the Nationally Assessment of Educational Progress (NAEP) is also required under federal law. In accordance with section 1112(b)(1)(F) of the Elementary and Secondary Education Act of 1965 (ESEA), and notwithstanding section 411(d)(1) of the National Education Statistics Act of 1994, an LEA that receives funds under subpart A of this part must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section.

Finally, school corporations are also required under federal law to annually assess English proficiency of all English learners in the school. See Section 111(b)(2)(G)(i) of Title I of ESSA. In Indiana, this requirement is satisfied through the WIDA assessment. It may be helpful to review

previous guidance documents ([here](#) and [here](#)) IDOE has released related to English proficiency identification: [LINK TO WIDA GUIDANCE](#).

A school or school corporation that fails to comply with these requirements may be subject to sanctions or experience negative consequences pertaining to school accountability. Specifically, a school that fails to assess at least 95.0 percent of students shall be penalized for accountability purposes by decreasing the school's overall academic achievement indicator score. Further, pursuant to 2 CFR sec. 200.338, if a school or school corporation fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the IDOE may impose additional conditions on the school or school corporation, or take one or more of the following actions:

- Temporarily withhold cash payments pending correction of the deficiency by the school or school corporation or more severe enforcement action.
- Deny the use of funds and any applicable matching credit for all or part of the activity or action not in compliance.
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings.
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

Stated plainly, if schools and school corporations elect to not participate in ILEARN/ISTEP+, NAEP or WIDA they risk negatively impacting their federal accountability ratings and also jeopardize the availability of federal grants, including Title I funds, for their schools. Any flexibility around these consequences must come from the US Department of Education or through federal legislative action.

Further, statewide assessments, specifically ILEARN/ISTEP+ and IREAD-3 are also required under Indiana law. The ILEARN assessment is required under IC 20-32-5.1 *et seq.*, while those students still entitled to take ISTEP+ find the requirement in IC 20-32-5, *et seq.* The reading proficiency assessment, IREAD-3, is required under IC 20-32-8.5, *et seq.* Absent flexibility granted by the Indiana General Assembly, IDOE has no authority to waive or modify these requirements.

Please note that IDOE has inquired with the US Department of Education about additional flexibilities. Further, we continue to engage state policymakers around waivers and/or flexibilities in light of the COVID-19 pandemic. We will communicate anything we learn from all entities. Schools and school corporations should be aware that as a new administration at the US Department of Education reviews these requirements on a federal level, and as Indiana's legislature enters the legislative session, new flexibilities or modifications regarding the requirement to assess students may be made. That said, absent waivers or flexibility, IDOE intends to enforce the assessment requirements and intends to take all necessary action it is required should a school elect to not assess its students. It is expected that assessments are delivered to the extent possible for corporations and schools when instruction is occurring onsite for one or more students.

Additional Considerations

IDOE recognizes the urgency surrounding assessment windows during November and December may be impacted based on local health department requirements.

- The ISTEP+ Retest administrations are scheduled through December 11, 2020. Schools offering only virtual instruction during this time period may assess students during the subsequent retest opportunity. Partial participation will result as an Undetermined score (UND) as documentation for graduation waivers.
 - Please note that in order to qualify for a graduation waiver, a student must have taken the graduation exam in every school year after the school year the student first takes the assessment. IDOE appreciates this is a significant concern for students who still need to either pass ISTEP+ or need to take the assessment in the 20-21 SY in order to qualify for a waiver. IDOE has reached out to state policy makers to address this issue and will communicate solutions if and when they become available. IDOE has no authority to unilaterally award a graduation waiver if a student does not take the graduation exam in the 20-21 SY.
- The ILEARN Biology assessments are scheduled through December 17, 2020. Schools offering only virtual instruction during this time period may assess students during the subsequent Biology window.
- For additional guidance on the duty to conduct initial educational evaluations for students with IEPs, please review [this guidance document](#).
- It is strongly recommended that if any student accountable to a school corporation fails to participate in any required assessment, the school corporation, to the extent it is able, thoroughly document the bases upon which the decision to not participate in the assessment was made.

Questions regarding the content of this memorandum may be directed to Andrew Bernlohr, General Counsel, IDOE: abernlohr@doe.in.gov.